REMARKS

The Examiner rejected claims 1, 14, 15, 24, 26-33, 40, 42, and 44 under 35 U.S.C. §103(a) as unpatentable over European Patent Application EP 1 089 515 A2 to Morrow (Morrow) in view of U.S. Patent No. 6,421,321 B1 to Sakagawa et al. (Sakagawa) and U.S. Patent No. 5,583,996 to Tsuchiya (Tsuchiya); rejected claims 2, 6-8, 10-13, 18-22, and 35 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, and U.S. Patent No. 5,914,953 to Krause et al. (Krause); rejected claims 3 and 4 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya and U.S. Patent No. 6,678,735 B1 to Orton et al. (Orton); rejected claims 5 and 36 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, Krause, and Orton; rejected claims 9 and 34 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, Krause, and U.S. Patent No. 7,177,642 B2 to Sanchez Herrero et al. (Sanchez Herrero); rejected claim 16 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, Krause, Orton, and Sanchez Herrero; rejected claim 17 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, and U.S. Patent No. 6,501,767 B1 to Inoue et al. (Inoue); rejected claims 23 and 37-39 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, Krause, and U.S. Patent No. 6,115,361 to Fredericks et al. (Fredericks); rejected claims 25 and 41 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, and Fredericks; and rejected claim 43 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya and Sanchez Herrero.

By this amendment, Applicants amend claims 1-3 to more clearly define the features of those claims.

Claims 1-44 are pending.

The Examiner rejected claims 1, 14, 15, 24, 26-33, 40, 42, and 44 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa and Tsuchiya. Applicants respectfully traverse this rejection.

For a proper rejection under 35 U.S.C. §103(a), the Office "bears the initial burden of factually supporting any prima facie conclusion of obviousness" and must therefore present "a clear articulation of the reason(s) why the claimed invention would have been obvious." M.P.E.P. §2142. An obviousness rejection "cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." M.P.E.P. §2141 quoting *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1386, 1385 (2007). This rationale must include a showing that all of the claimed elements were known in the prior art and that one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, to produce a combination yielding nothing more than predictable results to one of ordinary skill in the art. *KSR*, 82 USPQ2d at 1395. M.P.E.P. §2141.02 further notes that "a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). The rejection of the currently pending claims fails to satisfy this burden.

Claim 1 recites, among other things, the following feature: "setting a load control information in a predetermined field of a layer three or above message, wherein the load control information is separate from addressing information for said message."

The Examiner alleges that Morrow discloses "load control information" but admits that Morrow fails to disclose "setting a load control information in a predetermined field of a layer three or above message." Final Office Action, pages 40-42.

Moreover, **the Examiner appeared to agree during the telephonic interview that the art or record fails to disclose "wherein the load control information is separate from addressing information for said message."**

But a careful scrutiny of Morrow reveals that, at best, it discloses that the NAT 14 looks up a routing entry *f* for a path, and the routing entry *f* is used to determine a load sharing routine, such as round robin, weighted load, and the like. Morrow, paragraphs 0020-0022. It is clear that the packet received at NAT 14 does not include any information used to select a load sharing routine. *See, e.g.*, Morrow at paragraphs 0020-022. Thus, it is indisputable that the value *f* is not included in the packet received at NAT 14, much less a predetermined field of that packet. Thus, Morrow's value *f* cannot possibly constitute load control information.

To cure that chasm in Morrow, the Examiner relies on Tsuchiya. Tsuchiya discloses a method for conveying shortcut information between packet routing nodes. The shortcut information contains a shortcut address which is included in a shortcut header. Tsuchiya, col. 11 lines 6-24. The shortcuts are used to allow shortcut routing through so-called "stubs." Tsuchiya, col. 1, lines 7-14. Tsuchiya has nothing to do with load balancing but rather actual shortcuts through the stubs. At best, the Tsuchiya short cut describes a path rather than provide load control information.

Indeed, the Examiner's flawed position leads to some quirky results.[1] For example, the Tsuchiya shortcut may indicate the shortest path through the stub but lead to a high load, leading one away from load balancing. As such, it is not surprising that Tsuchiya fails to disclose or suggest at least the following feature of claim 1: "setting a load control information in a predetermined field of a layer three or above message, wherein the load control information is separate from addressing information for said message."

While Sakagawa discloses a shortcut path message to establish a shortcut path, Sakagawa fails to cure the aforementioned deficiencies of Morrow and Tsuchiya.[2] Therefore, claim 1 is allowable over Morrow, Sakagawa, and Tsuchiya, whether taken alone or in combination. And, the rejection of claim 1 under 35 U.S.C. § 103(a) should be withdrawn.

Moreover, the Examiner appears to be taking Official Notice on pages 40-42 of the Final Office Action by alleging that a shortcut constitutes load control information. Applicants disagree and submit that the Examiner has unfairly given Tsuchiya's short cut a broad reading. Furthermore, Applicants request that the Examiner support his apparent taking of Official Notice with evidence as required by M.P.E.P. § 2144.03. Absent such evidence, the rejection of claim 1 under 35 U.S.C. § 103(a) should be withdrawn for this additional reason.

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[1] These quirky results prove that the Examiner has construed the claims unreasonably. See *In re Suitco Surface, Inc.*, 2009-1418 (Fed. Cir. 2010) (finding that although the PTO is entitled to take the broadest reasonable construction of a claim term, the PTO's construction cannot be unreasonable in view of the claim language and the specification).

[2] As noted in the last response, the SP request message of Sakagawa does not convey load control information. The SP request messages of Sakagawa are merely requests by a terminal to use a shorter route.

Regarding the motivation to combine, the Examiner's modifications to Morrow, Sakagawa, and Tsuchiya fundamentally change the principal of operation of those references. For example, the Examiner reconstruction of Morrow changes that principle of operation of that reference. Specifically, Morrow uses NAT 14 to look up a routing entry *f* for a path. Thus, the Examiner's modifications would fundamentally change Morrow's NAT-based approach. In the case of Tsuchiya, the Examiner would modify Tsuchiya shortcut information to constitute load control information. Thus, Tsuchiya's system would not be able to cut through stub networks, which is the very heart of Tsuchiya. The Examiner's modifications of Morrow, Sakagawa, and Tsuchiya thus clearly run afoul of M.P.E.P 2143.03 which states "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)." Therefore, the rejection under 35 U.S.C. § 103(a) of the instant claims should be withdrawn for this additional reason.

Independent claims 26, 32, 40, and 44 include similar features as noted above with respect to claim 1. Claims 14, 15, and 24 depend from claim 1, and include all of the features recited therein. For at least the reasons noted above with respect to claim 1, independent claims 26, 32, 40, and 44 as well as claims 14, 15, 24, 27-31, 33, and 42, at least by reason of their dependency, are allowable over Morrow, Sakagawa and Tsuchiya, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claims 2, 6-8, 10-13, 18-22, and 35 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, and Krause. Applicants respectfully traverse this rejection.

Claims 2, 6-8, 10-13, and 18-22 depend from claim 1 recite all of the features therein. While Krause discloses routing network messages using routing table information, Krause fails to cure the aforementioned deficiencies of Morrow, Sakagawa, and Tsuchiya. Claim 35, although of different scope includes some features similar to those noted above with respect to claim 1. For at least the reasons given with respect to claim 1, claims 2, 6-8, 10-13, 18-22, and 35 are allowable over Morrow, Sakagawa, Tsuchiya, and Krause, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

Moreover, claim 2 recites "wherein the load control information enables load balancing to substantially equalize load." For at least the reasons noted above with respect to claim 1, neither Morrow, Sakagawa, nor Tsuchiya discloses or suggests this feature. And, Krause's routing network message fails to cure the deficiencies of Morrow, Sakagawa, and Tsuchiya. Therefore, claim 2 is allowable over Morrow, Sakagawa, Tsuchiya, and Krause, whether these references are taken individually or in combination, and the rejection of claim 2 under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claims 3 and 4 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya and Orton. Applicants respectfully traverse this rejection.

Claims 3 and 4 depend from claim 1. While Orton discloses a method for

communicating using the session initiation protocol, Orton fails to cure the aforementioned deficiencies of Morrow, Sakagawa, and Tsuchiya. At least by reason of their dependency on claim 1, claims 3 and 4 are allowable over Morrow, Sakagawa, Tsuchiya, and Orton, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

Moreover, Applicants submit that neither Orton, Morrow, Sakagawa, nor Tsuchiya discloses at least the following feature of claim 3: " wherein said message is a session initiation protocol message." For this additional reason, claim 3 is allowable over Orton, Morrow, Sakagawa, and Tsuchiya, whether taken alone or in combination. And, the rejection of claim 3 under 35 U.S.C. § 103(a) should be withdrawn.

The Examiner rejected claims 5 and 36 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, Krause, and Orton. Applicants respectfully traverse this rejection.

Claim 5 depends from claim 1, and claim 36 depends from claim 32. For at least the reasons noted above with respect to claims 1 and 32, claims 5 and 36 are allowable over Morrow, Sakagawa, Tsuchiya, Krause and Orton, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claims 9 and 34 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, Krause, and Sanchez Herrero. Applicants respectfully traverse this rejection.

Claim 9 depends from claim 1, and claim 34 depends from claim 32. While Sanchez Herrero discloses a method for supporting multiple registrations from the same

user, Sanchez Herrero fails to cure the aforementioned deficiencies of Morrow, Sakagawa, Tsuchiya, and Krause. At least by reason of their dependency on claims 1 and 32, claims 9 and 34 are allowable over Morrow, Sakagawa, Tsuchiya, Krause and Sanchez Herrero, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claim 16 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, Krause, Orton, and Sanchez Herrero. Applicants respectfully traverse this rejection.

Claim 16 depends from claim 1. At least by reason of dependency on claim 1, claim 16 is allowable over Morrow, Sakagawa, Tsuchiya, Krause, Orton and Sanchez Herrero, whether these references are taken individually or in combination, and the rejection of that claim under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claim 17 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, and Inoue. Applicants respectfully traverse this rejection.

Claim 17 depends from claim 1. While Inoue discloses a method for handing over a mobile device to a different address space, Inoue fails to cure the aforementioned deficiencies of Sakagawa, and Tsuchiya. At least by reason of dependency on claim 1, claim 17 is allowable over Morrow, Sakagawa, Tsuchiya, and Inoue, whether these references are taken individually or in combination, and the rejection of that claim under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claims 23 and 37-39 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, Krause, and Fredericks. Applicants respectfully traverse this rejection.

Claim 23 depends from claim 1, and claims 37-39 depend from claim 32. While Fredericks discloses a method for implementing a link level service in a computer network, Fredericks fails to cure the aforementioned deficiencies of Morrow, Sakagawa, Tsuchiya, and Krause. At least by reason of their dependency on claims 1 and 32, claims 23 and 37-39 are allowable over Morrow, Sakagawa, Tsuchiya, Krause and Fredericks, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claims 25 and 41 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya, and Fredericks. Applicants respectfully traverse this rejection.

Independent claims 25 and 41 include similar features as noted above with respect to claim 1. For at least these reasons given above, claims 25 and 41 are allowable over Morrow, Sakagawa, Tsuchiya, and Fredericks, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

The Examiner rejected claim 43 under 35 U.S.C. §103(a) as unpatentable over Morrow in view of Sakagawa, Tsuchiya and Sanchez Herrero. Applicants respectfully traverse this rejection.

Independent claim 43 includes similar features as noted above with respect to claim 1. For at least this reason, claim 43 is allowable over Morrow, Sakagawa, Tsuchiya, and Fredericks, whether these references are taken individually or in combination, and the rejection of claim 43 under 35 U.S.C. §103(a) should be withdrawn.

CONCLUSION

On the basis of the foregoing amendments, the pending claims are in condition for allowance. It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

Applicant is concurrently filing herewith a Petition for a two-month extension of time and Request for Continued Examination with the requisite fee, authorization for a credit card payment of the filing fee is submitted herewith. No additional fees are believed to be due, however the Commissioner is authorized to charge any additional fees or credit overpayments to Deposit Account No. 50-0311, reference No. 39700-590001US/NC16961US. If there are any questions regarding this reply, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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